

**DEFERRED COMPENSATION - RESOLUTION INFORMATION**

**FOR THE IMPLEMENTATION OF AN APPROVED DEFERRED COMPENSATION PLAN,  
SERVICE AGREEMENT OR SUPPLEMENTARY SERVICE AGREEMENT**

Division of Local Government Services

New Jersey Department of Community Affairs

Updated: March, 2004

The Division of Local Government Services has prepared a sample resolution to serve as the basis for the implementation of a deferred compensation plan and service agreement. This form is also intended to be used for the authorization to execute an additional service agreement with a new third party administrator for the purpose of providing alternative investment options to an existing approved deferred compensation plan. All forthcoming resolutions should be in compliance with the *Economic Growth and Recovery Reconciliation Act of 2001 and §401(a)(9) of the Internal Revenue Code*.

### **SUBMISSION OF DOCUMENTATION**

- An original signed, sealed and dated copy of the resolution must be forwarded to the Division for review and approval prior to the deferral of any funds.
- Should you have any questions, please contact the Division at:

 Deferred Compensation  
Division of Local Government Services  
PO Box 803  
Trenton, NJ 08816-4544

 Colleen Kelly at 609-292-0827

### **RESOLUTION**

The authorization to execute a Service Agreement with a contractor for the administration of the investments of funds under a deferred compensation plan shall only be accomplished through the adoption of a resolution of the governing body of the local governmental unit.

The specific elements which must be addressed are set forth in *Municipal, County and Authority Employees Deferred Compensation Plans Rule* at *N.J.A.C. 5:37-5.2 and N.J.A.C. 5:37-5.3*.

Set forth below in narrative form are those elements which must be contained in a resolution implementing a Service Agreement.

### ***WHEREAS***

In setting forth the rationale for the adoption and implementation of a Service Agreement, it is recommended that the resolution reflect the concerns of the local entity:

- the offering of additional investments from another contractor will provide additional retirement investment options to participating employees
- the fact that there is no cost to the local governmental unit to adopt and implement a Supplementary Service Agreement.

## ***NOW, THEREFORE BE IT RESOLVED***

Following is a list of items which **MUST** be addressed in the resolution. An example of the language to be incorporated into the resolution follows each item and has been placed in *italic* type.

### **Reference to Existing Deferred Compensation Plan Document**

When adopting a Supplementary Service Agreement, the resolution must identify the contractor and Prototypical Plan Document Identifier for the local government's existing deferred compensation plan.

- *In [insert year] the governing body of the [insert name of local entity] adopted a deferred compensation plan provided by [identify contractor] and assigned the plan identifier [insert plan identifier] by the Division of Local Government Services.*

### **Plan Adoption (N.J.A.C. 5:37-5.2)**

When adopting a Prototypical Plan, the resolution must identify the full name of the contractor and list the Plan's identifier that was assigned by the Director of the Division of Local Government Services.

*The governing body hereby adopts a deferred compensation plan provided by [identify contractor and plan identifier].*

### **Selection of Contractor/Solicitation Methods (N.J.A.C. 5:37-7.1)**

The resolution must describe the method used to solicit proposals; identify the responding contractors; and provide the rationale for selecting the successful contractor.

- Solicit Proposals: *Proposals for a Supplementary Service Agreement were requested from the following contractors [insert name of contractors].*
- Responding Contractors: *The contractors responding to the request for proposals were [identify responding contractors].*
- Selection Rationale: *The successful contractor is [identify contractor]. The governing body reviewed the proposals submitted and met with representatives of the responding companies. The [identify contractor] was selected because [detail rationale for selection].*

### **Local Plan Administrator (N.J.A.C. 5:37-5.4)**

The resolution **MUST** identify the local plan administrator. This is best implemented by identifying the person(s) to serve as Administrator by title(s) rather than by name.

*The [title(s)] is hereby designated as the Local Plan Administrator for the administration of the Plan.*

### **Execution of a Service Agreement and Contractor Identified**

The resolution must contain specific language related to an authorization for the execution of the Service Agreement or a Supplementary Service Agreement with the contractor. The person(s) authorized to execute the Agreement has to be identified.

- *The **[title(s)]** is/are authorized to execute a Service Agreement/Supplementary Service Agreement with **[identify contractor and Service Agreement Identifier]** and to submit all necessary documents to the Director of the Division of Local Government Services within the State Department of Community Affairs for approval.*
- *A certified copy of this resolution shall be forwarded to the Director of the Division of Local Government Services within the State Department of Community Affairs.*

#### **Statement of Non-Collusion (N.J.A.C. 5:37-5.7)**

The resolution must contain a statement that there was no collusion, or evidence or appearance of collusion, between any local official and a representative of the contractor in the selection of a contractor for the administration of the Service Agreement or Supplementary Service Agreement.

- *There has been no collusion, or evidence or appearance of collusion, between any local official and a representative of the contractor in the selection of a contractor for the administration of a Service Agreement pursuant to N.J.A.C. 5:37-5.7.*

#### **Compliance With Internal Revenue Code (N.J.A.C. 5:37-3.5)**

The resolution must state that the local governmental unit is adopting a Prototypical Plan which is substantially similar to one on which a satisfactory Internal Revenue Service private letter ruling has been obtained. The resolution also shall indicate that the use of the Ruling is for guidance only and the realization that for Internal Revenue Service purposes, the Ruling of another employer is not to be considered precedent.

*The **[identify local governmental unit]** is adopting a deferred compensation plan substantially similar to one on which a favorable Private Letter Ruling has been previously obtained from the federal Internal Revenue Service except for provisions added by reason of the Small Business Job Protection Act of 1996 (United States Public Law No. 104-188); **the Economic Growth and Tax Relief Reconciliation Act of 2001 (United States Public Law No. 107-16); and §401(a)(9) of the Internal Revenue Code** and all such provisions are stated in the plan in terms substantially similar to the text of those provisions in the Internal Revenue Code Section 457. The use of the Ruling is for guidance only and acknowledges that for Internal Revenue Service purposes, the Ruling of another employer is not to be considered precedent.*